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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 NATHANIEL MCCOY-WINSTON,

9 Plaintiff,

10 v.

11 UNITED PARCEL SERVICE, INC.,

12 Defendant.

Case No. C20-779-MLP

ORDER

13
14 Currently before the Court is Plaintiff's "Request for Reconsideration of Order Denying
15 Motion to Compel" ("Plaintiff's Motion"). (Dkt. # 40.) Plaintiff's Motion requests
16 reconsideration of the Court's May 10, 2021 oral ruling (dkt. # 39) denying Plaintiff's motion to
17 compel Interrogatories Nos. 3 and 4 and Requests for Production Nos. 2 and 3 (dkt. # 26). (*Id.*)

18 Plaintiff seeks reconsideration of the Court's oral ruling denying Plaintiff's motion to
19 compel regarding the following discovery requests:

20 **Interrogatory No. 3:** For each year beginning January 1, 2015 to the present year,
21 please state with reference to the persons employed at any shipping warehouse or
22 facility within Washington state the following: 1. The total number of employees
23 at each shipping warehouse or facility; 2. The employees that filed worker's
compensation claims at each shipping warehouse or facility and the date the
employee filed a worker's compensation claim; 3. For each employee that filed a
worker's compensation claim identify if the employee is still employed with the
date of termination/end of employment if applicable, the employee's name, address

1 and phone number, and the dates the employee was off work due to the worker's
2 compensation claim.

3 **Request for Production No. 2:** Please produce for copying and inspection all
4 writings, documents, recordings, etc., that relate to, refer to, support, rebut and/or
5 were used in answering the previous interrogatory.

6 **Interrogatory No. 4:** Please identify all complaints lodged and/or filed with
7 Defendant and/or other state and/or local government agency claims filed against
8 any Defendant relating to retaliation or wrongful termination involving a work
9 related injury, physical injury or disability within the past 10 years and state with
10 reference to each claim filed the name, address, and phone number of the person
11 who filed the claim; the employment history with the defendant of the person who
12 filed the claim, including job titles and date; the date the claim was filed; a summary
13 of the claim filed and a description of all action taken as a result of the claim filed.

14 **Request for Production No. 3:** Please produce for copying and inspection all
15 writings, documents, recordings, etc., that relate to, refer to, support, rebut and/or
16 were used in answering the previous interrogatory and/or all documents relating to
17 any claims identified in the answer to the previous interrogatory.

18 (Dkt. # 40 at 2-3.)

19 On May 10, 2021, the Court heard oral argument on Plaintiff's motion to compel. (Dkt.
20 # 39.) During oral argument, this Court found Interrogatories Nos. 3 and 4 were overly broad and
21 not relevant or proportionate to the needs of this case because Plaintiff failed to establish a need
22 for pattern or practice evidence and that Plaintiff's request fell outside the scope of Plaintiff's
23 retaliation claim in his complaint. (*See id.*) Consequently, the Court denied Plaintiff's motion to
compel regarding Interrogatories Nos. 3 and 4 and Requests for Productions Nos. 2 and 3. (*Id.*)

Plaintiff's Motion now submits "recently disclosed" emails from Defendants that Plaintiff
argues demonstrates Plaintiff's injury claim was referred to as a "loss time" claim. (Dkt. # 40 at
3; *see* dkt. # 41 at ¶ 4, Ex. 1-2.) Plaintiff's Motion submits that, in another worker's
compensation retaliation case "recently discovered" by Plaintiff and filed in this Court, a risk
manager for Defendant supplied a declaration including a list of all worker's compensation

1 claims filed by UPS employees in Washington from May 31, 2017, through May 31, 2019. (*Id.*
2 at 3-4 (citing *Nettleton v. UPS*, Case No. C19-1684-JCC, Dkt. #24).) In that same case, Plaintiff
3 notes that Defendants provided a declaration from a UPS manager that acknowledged his pay
4 was based upon meeting performance review goals, which included having low reported
5 worker's compensation injuries. (*Id.* at 4.) On May 27, 2021, Plaintiff filed an additional
6 supplement containing three depositions from May 12, 2021, from three of Defendant's
7 employees who served in a supervisory role at UPS at Plaintiff's previous employment facility.
8 (Dkt. ## 42-43.) Based on the submitted depositions, Plaintiff alleges the UPS hub employees
9 would engage in regular competitions where the hubs would compete for lowest reported injuries
10 and were rewarded with funds or parties when they met those goals. (Dkt. # 42 at 2.)

11 Based upon the submitted evidence, Plaintiff argues obtaining his sought information
12 under Interrogatories Nos. 3 and 4 for the State of Washington is not overly difficult or
13 burdensome to Defendant and that there was financial motivation for Defendant's management
14 to engage in retaliatory conduct against employees who pursued worker's compensations claims.
15 (Pl.'s Mot. at 5.) Plaintiff additionally argues that, pursuant to *Wilmot v. Kaiser Aluminum and*
16 *Chem. Corp.*, 118 Wash.2d 46 (1991), evidence of an actual pattern of retaliatory conduct is
17 "very persuasive" for establishing a retaliation case based on a worker's compensation claim.
18 (*Id.* at 4-5.) As such, Plaintiff argues he is entitled to his requested discovery because it is
19 circumstantial evidence in support of his retaliation claim. (*Id.* at 6.)

20 Under Local Rule 7(h)(1), motions for reconsideration are disfavored in this district. Such
21 motions will be granted only upon a "showing of manifest error in the prior ruling" or "new facts
22 or legal authority which could not have been brought to [the Court's] attention earlier without
23 reasonable diligence." LCR 7(h)(1).

1 Here, Plaintiff has failed to demonstrate manifest error in the Court's prior ruling nor
2 presented new facts or legal authority which could not have been brought to the Court's attention
3 earlier through reasonable diligence. The arguments and evidence presented in Plaintiff's Motion
4 could have been brought to the Court's attention earlier through reasonable diligence. *See* LCR
5 7(h)(1). Nevertheless, Plaintiff's submitted evidence does not ameliorate the Court's concerns
6 about the scope of the sought discovery in Interrogatories Nos. 3 and 4 or the relevance of
7 pattern and practice evidence to Plaintiff's retaliation claim in this case. (*See* Dkt. # 1-1 at ¶ 4.1.)
8 Plaintiff's cited legal authority that evidence of an actual pattern or practice may be "very
9 persuasive" for a retaliation claim also fails to demonstrate why that is in fact the case in this
10 matter nor demonstrates a relevant need for such evidence based on the record and Plaintiff's
11 sole retaliation claim.

12 Plaintiff has not made either of the showings required by LCR 7(h)(1). Accordingly,
13 Plaintiff's Motion (dkt. # 40) is DENIED. The Clerk is directed to send copies of this Order to
14 the parties.

15 Dated this 28th day of May, 2021.

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17 MICHELLE L. PETERSON
18 United States Magistrate Judge
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